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Arizona Administrative Register



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Part 2 contains pages 5879 through 6025.

Scott Cancelosi
Assistant Director
Public Services Division

BETSEY BAYLESS
Secretary of State

John J. Kyl
Acting Editor
Arizona Administrative Register

Notices of Final Rulemaking

~~G.F.~~ Prior ~~The provider shall obtain prior authorization must be obtained~~ for all inpatient hospitalizations and partial care services as authorized in R9-31-1202 and R9-31-1203.

~~H.G.~~ A provider shall comply with the requirements specified in subsections (B), and (C), ~~and (D)~~ ~~or~~ If a provider fails to comply, payment may be denied, or if paid, may be is recouped by the Administration.

~~I.H.~~ A behavioral health service provided by the IHS or a Tribal Facility shall be reimbursed as specified in R9-31-1616.

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

PREAMBLE

1. Section Affected Rulemaking Action
R14-4-148 New Section
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):
Authorizing statutes: A.R.S. §§ 44-1821, and 44-1845
Implementing statutes: A.R.S. §§ 44-1844, 44-1941, and 44-1945
Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13
3. The effective date of the rule:
December 6, 2001
4. A list of all previous notices appearing in the Register addressing the final rule:
Notice of Rulemaking Docket Opening: 6 A.A.R. 1746, May 12, 2000
Notice of Proposed Rulemaking: 6 A.A.R. 3169, August 25, 2000
Notice of Supplemental Proposed Rulemaking: 7 A.A.R. 1002, May 2, 2001
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Sharleen A. Day, Associate General Counsel
Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, AZ 85007-2996
Phone: (602) 542-4242
Fax Number: (602) 594-7421
6. An explanation of the rule, including the agency's reasons for initiating the rule:
The Arizona Corporation Commission (Commission) adds new Section R14-4-148 in order to: (i) provide for an exemption for transactions effected by Canadian dealers and their salesmen in certain Canadian accounts; (ii) detail the requirements for the grant and maintenance of the exemption; (iii) enumerate the application and renewal requirements for the exemption; and (iv) detail the extent of the activity permitted in Arizona under the exemption. A brief description of the section covered by this rulemaking follows:
To effect transactions under this section, the Canadian dealers must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office or a branch of a dealer domiciled in the United States.
The Canadian dealer and its salesmen may only effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by (i) a person from Canada who temporarily resides in or is present in Arizona and with whom the Canadian dealer had a bona fide dealer-client relationship before the person entered the United States, or (ii) a person who resides in or is temporarily present in Arizona and whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.
To effect transactions under this section, a dealer shall (i) be a member of a Canadian SRO, stock exchange or Bureau des Service Financiers, and (ii) maintain in good standing provincial or territorial registration and membership in a Canadian SRO, stock exchange or Bureau des Service Financiers. Salesmen may effect transactions under this section to the same extent as their dealer provided they are registered and in good standing in the jurisdiction from which they are effecting transactions, has not been convicted of a felony or misdemeanor of which fraud is an essential element, or is currently enjoined from engaging in any conduct in connection with the purchase and sale of securities.

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Prior to effecting transactions under this section, a dealer must file (i) a copy of its last registration or renewal application filed in the jurisdiction in which the dealer has its principal office, (ii) a consent to service of process; (iii) the fee required under A.R.S. § 44-1861(G); (iv) written evidence that the dealer's membership in the Canadian SRO, stock exchange, or the Bureau des Services Financiers is in good standing; and (v) a copy of each salesman's registration or renewal application filed in the jurisdiction in which the salesman is registered and resident, and a consent to service of process for each salesman.

Each notice filed under this Section shall be effective on the date received by the Commission and expire on December 31.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The summary of the economic, small business, and consumer impact:

The economic, small business, and consumer impact statement for Section R14-4-148 ("rule 148") analyzes the costs, savings, and benefits that accrue to the Commission, the office of the attorney general, the regulated public, and the general public. With the adoption of rule 148, the impact on established Commission procedures, Commission staff time, and other administrative costs is minimal. The estimated additional cost to the office of the attorney general is minimal. The benefits provided by rule 148 are nonquantifiable. Rule 148 should benefit the Commission's relations with the regulated public because the grant of an exemption will permit Canadian dealers and salesmen to manage and transact business in the accounts of their clients while those clients are in Arizona. The public will benefit from the continuation of certain standards for dealers and salesmen and will benefit from the convenience of effecting transactions in their accounts while in Arizona. The Commission anticipates that the rulemaking will not significantly increase monitoring, recordkeeping, or reporting burdens on businesses or persons. The costs of implementation or enforcement are only marginally increased. Please provide comment regarding the accuracy of this summary to the individual named in item #5 above.

9. A description of the changes between the proposed rule, including supplemental notices, and the final rule (if applicable):

The Commission originally proposed a limited registration for Canadian dealers and their salesmen effecting certain transactions in Arizona. Based upon information obtained during the public comment period, the Commission amended its proposal in the Notice of Supplemental Proposed Rulemaking to propose an exemption for Canadian dealers and their salesmen effecting certain transactions in Arizona. In response to written comments on the amended proposal, the Commission has proposed changes to the text of one section, which is not substantially different from the proposed rule reflected in the Notice of Supplemental Proposed Rulemaking. That change is set forth below and has been incorporated into the rule attached to this Notice.

R14-4-148(B): The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office of, or a branch of, ~~or a natural person associated with~~ a dealer domiciled in the United States.

10. A summary of the principal comments and the agency response to them:

The agency received four comment letters following the Notice of Supplemental Proposed Rulemaking from the following organizations: the Investment Dealers Association of Canada (the "IDA"), Dorsey & Whitney, a follow up letter from Dorsey & Whitney, and Edward Jones. The letter from the IDA expressed general support with no substantive comments. Comments from the other organizations addressed the following:

R14-4-148(B) limits the availability of the exemption to those entities domiciled in Canada, with no office or other physical presence in the United States. That limitation excluded offices, branches or natural persons associated with a dealer domiciled in the United States from using the exemption. Edward Jones and Dorsey & Whitney recommended the language in section B be amended to clarify that the exemption is available to Canadian salesmen of a Canadian subsidiary of a United States dealer as well as Canadian sister entities or Canadian subsidiaries of United States dealers. Edward Jones recommended the Commission delete the phrase "or a natural person associated with" in that section. Because a natural person located in the United States who is associated with a United States dealer would constitute a "physical presence" in the United States, the Commission considers the subject language to be redundant and revised the rule in accordance with the recommendation.

R14-4-148(E) provides for automatic disqualification from use of the exemption for certain individuals and entities that have poor disciplinary histories. Dorsey & Whitney recommended the Commission amend the language of the disqualifying provision in rule 148(E)(2) to eliminate the language "involving fraud, deceit, racketeering or consumer protection laws" and replace it with a requirement for a "finding of fraud or deceit or a finding of a violation of racketeering or consumer protection laws." The Commission did not make the recommended change because the subject language in rule 148(E) is identical to numerous other disqualifying provisions in the Securities Act and the Arizona Administrative Code and was intended to be subject to the same application and interpretation as those provisions.

R14-4-148(F) enumerates the filing requirements for dealers and salesmen effecting transactions under the exemption. Dorsey & Whitney recommended the Commission eliminate the requirement for a notice filing for all salesmen conducting business in Arizona under rule 148(F)(5) because Canadian dealers must employ salesmen that are appro-

privately registered and in good standing in the Canadian jurisdiction from which they are effecting transactions. Dorsey & Whitney contended that, in the absence of substantive regulation, the notice filing would impose significant costs to the dealers while adding little to investor protection. The Commission imposed an annual notice filing in order to ensure the Commission has current information regarding the entities and persons effecting securities transactions in Arizona by which to monitor compliance with rule 148 and to provide assistance to any investor seeking it from the Commission. Because the Commission retains full jurisdiction over all activities that fall outside of rule 148 as well as jurisdiction over all activities involving fraud, the Commission considered the information sought in the annual notice important and did not make the recommended change.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None
12. Incorporations by reference and their location in the rule:
Not applicable
13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency rule and the adoption of the final rule.
Not applicable
14. The full text of the rule follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND
ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section

R14-4-148. Transactions Effected by Canadian Dealers and Salesmen

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-148. Transactions Effected by Canadian Dealers and Salesmen

- A. A transaction effected by or through a Canadian dealer or its salesmen is added to the class of transactions exempt under A.R.S. § 44-1844, provided the transaction is conducted in accordance with the terms of this Section.
- B. The dealer must be domiciled in Canada, have no office or other physical presence in the United States, and not be an office or branch of a dealer domiciled in the United States.
- C. The dealer and its salesmen may only effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by:
 1. An individual from Canada who temporarily resides in or is temporarily present in this state and with whom the Canadian dealer had a bona fide dealer-client relationship before the individual entered the United States; or
 2. An individual present in this state whose transactions are in a Canadian self-directed tax-advantaged retirement account of which the individual is the holder or contributor.
- D. To effect transactions under this Section, a dealer shall:
 1. Comply with the requirements of subsection (F).
 2. Be registered with or a member of a Canadian SRO, stock exchange, or the Bureau des Services Financiers and maintain that registration or membership in good standing.
 3. Disclose to its clients in this state that the dealer and its salesmen are not subject to the full regulatory requirements of the Arizona Securities Act.
- E. An exemption under this Section shall not be available to a dealer or salesman if the dealer or salesman:
 1. Has been convicted within ten years of the date of filing of the notice under this Section of a felony or misdemeanor of which fraud is an essential element, or a felony or misdemeanor involving the purchase or sale of securities or arising out of the conduct of the business as a dealer or salesman.
 2. Is subject to an order, judgment, or decree issued by a court of competent jurisdiction, SRO, or administrative tribunal entered within 10 years preceding the filing of the notice under this Section enjoining or restraining the dealer or salesman from engaging in or continuing any conduct or practice in connection with the sale or purchase of securities or involving fraud, deceit, racketeering or consumer protection laws.
- F. Prior to a dealer or salesman effecting a transaction under this Section, a dealer shall file with the Division a notice that contains the following:
 1. A copy of the last registration or renewal application filed in the jurisdiction in which the dealer has its principal office, with all amendments since that filing.
 2. A consent to service of process pursuant to A.R.S. § 44-1862.

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3. The fee required under A.R.S. § 44-1861(G).
 4. Written evidence that the dealer's membership in a Canadian SRO, stock exchange, or the Bureau des Services Financiers is in good standing.
 5. For each salesman effecting transactions in Arizona, the dealer shall file
 - a. A copy of the last registration or renewal application filed in the jurisdiction in which the salesman is registered and resident, with all amendments since that filing.
 - b. A consent to service of process.
 - c. Written evidence that the salesman is registered and in good standing in the jurisdiction from which he or she is effecting a transaction into this state.
- G.** A notice filed under this Section is effective on the date received by the Commission and expires on December 31.